

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA,

Plaintiff,
v.

ALEXANDER ALONSO MASCORRO,
Defendant.

Case No. 1:17CR153

MOTION FOR PRETRIAL RELEASE
BASED UPON NEW EVIDENCE

Judge. Thad Heartfield

Comes Now, Defendant Alexander Alonso Mescorro, Pro Per, brings forth his motion for Pretrial Release, and states the following in support thereof:

I

Defendant asserts that he is entitled to a new pretrial release detention hearing, based upon the 5th Amendment's due process clause, new evidence since the last hearing, and that he has been continuously been held in pretrial detention for 27 months from (Feb. 21, 2018.) Though (May, 30, 2020), a detention long enough to constitute punishment may be held to violate due process. See Sandin v. Conner, 515 U.S. 472, 484 (1985) ("(A) detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.") (Quoting Bell v. Wolfish, 441 U.S. 520, 535 (1979)); See also Bell, 441 U.S. at 535-36 n. 16 (same)

II.

On December 6, 2017, a Federal grand jury indicted Defendant Alexander Alonso Mascorro in count one of the Indictment in this case (doc. # 1). Specifically, the Indictment charges the defendants and numerous co-defendants with Conspiracy to possess with intent to distribute a controlled substance (cocaine HCL) in violation of, 21 U.S.C § 846. See id.

After his arrest, on February 21, 2018, the defendant originally consented to detention but reserved his rights to reopen the issue of detention. See Order (doc. # 58). Judge Keith F. Giblin.

On April, 17, 2018 he filed a Motion for a detention hearing, which the, ->

(See page 3)

Judge Heartfield ordered that the motion to suppress be granted and all evidence seized as a result of the wiretap orders in this case be excluded. See *id.* On January 23, 2019 Government filed an interlocutory appeal to the Fifth Circuit (U.S. v. Romano, et al., 19-40045)(5th Cir.) the appeal was dismissed on 4-5-2019.

In his latest motion for another detention hearing the defendant notes his ties to the community in Houston, the availability of a qualified third party custodian, and the availability of employment. See Motion (doc. # 216). In a Pro se Motion, Alonso Mascarro also references his young children, including one with special needs. See Pro se Motion for bond (doc. # 213). He discusses the financial hardship his detention has put on his family. He further argues that erroneous evidence was presented during his contested detention hearing falsely indicating that he failed a drug test while on probation. (1/16/2019) Doc. # 223

On April 15, 2019, Defendant Alexander Alonso M. move this court to enter an order allowing him to adopt co-defendant's Motion to Suppress wiretap. On April 29, 2019, the Government file a Motion to Admit Text Message and Cooperating Witness Testimony (Doc. No. 289.)

In November, 20, 2019 Judge Thad Heartfield granted an Order Adopting part (1) of Report and recommendation regarding Motion Seeking Leave to adopt co-defendant Worrell's Motion to Suppress wiretap's and all the fruits at the poison tree.

On February 17, 2020 the Undersigned held a hearing on the Defendant's motion to Suppress, Text messages and Cooperating Witness, Physical Evidence.

On March, 6, 2020. Judge Zack Hawthorn, Denying Defendants Motion to Suppress Text Message and Witness Testimony (Doc # 400) Also.

Alonso - Mascarro's motion for speedy trial (Doc. # 360) which the court construes as a motion to Suppress is denied.

III

In the instant motion Alexander Alonso Morsoro argues that he is entitled to a new pretrial release hearing based upon facts and evidence that are "New" since the last hearing held on 4/27/2018, and under Denying Detention Hearing (Doc # 223 on 1-16-2019). Bases his motion upon the B.R.A Act of 1974 5th Amendment Due Process and Equal protection clauses under the United States Constitution plus, 18 U.S.C § 3141-50

IV

The instant motion seeking to reopen - the issue of a detention hearing will point to, "New information" No only unknown to defendant at the time of his first hearing, but how the Information is germane and relevant material for his pretrial release. After 28 months of pretrial incarceration. The facts of the case after 28 months of incarceration, have dramatically changed defendant stands on, "Information" only by the government, 28 months later. The latest plea agreement offered by the government is (Misprison of a Felony 18 U.S.C § 4) with no more than 3 years in prison, this was brought on June 4, 2020.

Therefore, If the defendant pleads guilty he would have 2 months 4 days over served on this charge, less goodtime, and Immediately eligible for release, bond, or Home confinement under the CARES Act (P.L. 116-136).

Equally Mr. Alexander Alonso M. presents new information bearing on the courts previously ruled upon issues. Defendant Pro per Alexander Alonso M asserts that previous Attorney was ineffective due his failure to rebut the governments applicable presumption the court relied on in its order denying motion for detention hearing and pro per motion for release. see Strickland v. Washington 466 U.S. 668 (1984)

-1A) Safety of the Community, "Court's Order" -

Defendant asserts that the evidence suggesting that defendant engaged in illegal community while serving a term of defered probation. This finding was based on his conduct overall while serving a term of defered probation. (See order page 93) (Doc # 93)

Defendant asserts the events forming the indictment however the government delayed 4 years to bring forth the original conspiracy on Dec 6, 2017. Thus, there was no criminal history at the time of the events on Dec 6, 2017. Defendant asserts the events forming the indictment occurred on Dec, 2013.

-1B) Safety of the Community, "Court's Order" -

Defendant asserts the government delayed 4 years to bring forth the original conspiracy however the government delayed 4 years to bring forth the original conspiracy. (See order page 94) (Doc # 94)

The fact remains that at this time, defendant stands charged with a serious drug offense under the Controlled Substances Act. He had the opportunity to present evidence rebuffing the presumption that no conditions can be imposed to assure his appearance or the safety of the community. See 18 USC, § 3142(e)(3) (discussing rebuttable presumption of

rebutting the presumption that no conditions can be imposed to assure his appearance or the safety of the community. See 18 USC, § 3142(e)(3) (discussing rebuttable presumption of

purposes of defendant in certain Controlled Substances Act cases). (See order page 94)

-1B) Rebutting the Court's Order -

Defendant Alexander Alonso, presents evidence rebuffing the he

stands accused or alleges of the Controlled Substances Act. (18 USC § 3142(e)(3))

is not longer a threat to the safety of the community. Defendant no longer

thus, does not to rebut said presumption under the court's previous ruling upon

standard. Now the defendant is not charged with the above crime.

Defendant was indicted on Dec, 6, 2017 with conspiracy to possess with intent to distribute

Controlled Substances (cocaine HCL) 21 USC § 846. After defendant was arrested on February

21-2018. Six months later on August, 3, 2018 The United States filed an Information

Charging the defendant with one count of conspiracy to possess with the intent to distribute a controlled substance (cocaine HCL) in violation of 21 USC § 841(c)(1).
See information doc. #160. This is a lesser charge from the original Indictment. Best/Alles.
August 1, 2018 a (Co-defendant), File a motion of suppression wifep and all the fruits
of the evidence from wiretaps. (See Doc. # 370) The evidence was suppressed
by Judge Zack Hawthorn. On November 20, 2019 Judge Thad Heartfiled
ordered adopting co-defendant's motion of suppression from Judge Zack Hawthorn, ordered
-On June 4, 2020 the United States Government brought charges with information
of a violation 18 USC § 4 misprision of a felony. This charge imposes imprisonment of
not more than Three (3) years, with the supervised release of not more than one (1) year.
Therefore, if the defendant pleads guilty he would be (2 months 4 days) over served his
time on probation, less goodtime, and immediately eligible for release, bond or Home confinement
under the Coats Act (CPL 116-136) Attorney Generals memo dated March 13, 2020 and April 14, 2020.
2A) The defendant was not wholly forthcoming with the present services officer about his
travels outside the County (see page 2) (Doc # 773)
2A) Regarding the defendant traveling outside the County, When defendant traveled outside the County
Defendant Alexander Alonso had a permit from the County for the probation officer
to cross the border from Laredo Tx to Nuevo Laredo Mexico

2A) Relating The Coats Order

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travels outside the County (see page 2) (Doc # 773)

2A) "Right Risk" Court Order

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All ways pay bills to the government on time, Report to my probation Officer
Vicky Turner on time, all ways Afford to my monthly visits of my probation
Afford to my (AA/NA) Classes on time, never fail a drug test, All this can be

3A) Rebutting the Court's Order.

No conditions or combination of conditions can be imposed. See (Doc 223).

The defendant's criminal history, and his statements to the Probation Services Office,
This Court specifically concluded that based on the testimony presented at the hearing,

3) Criminal History

Suppression Motion.

of bond and imposition of detention order following adverse ruling at defendant's

See U.S. v. DeRallo, 849 F.3d 625, 626 - 27 (D.C. Cir. 1988) (allowing review of

of defendant's home as surely).

rebutted by evidence of effectiveness of electronic bracelet together with posting

See e.g., U.S. v. O'Brien, 895 F.3d 810, 816 (1st Cir. 1990) presumption of flight risk

agreeing to wear electronic monitoring bracelet and posting home as surely,

the defendant who, despite being flight risk, overcame presumption against release by

But See U.S. v. O'Brien, 895 F.3d 810, 815 - 17 (1st Cir. 1990) affirming pretrial release order

by character witness and lack of criminal history).

See, U.S. v. Stone, 608 F.3d 939, 947 (6th Cir. 2010) (presumption of flight risk rebutted

in that can be rebutted by Probation Officer, Vicky Turner.

United States of America so the probation Officer know that I was back

way to Mexico Laredo only and also report when I was back to the

In at the same time report to (her) (Probation Officer) that I was on my

3B) - Rebutting the Court Order.

Defendant asserts the events forming the indictment occurred on before/After December, 2013. However the government delayed (4) years to bring forth the original conspiracy on 12/6/2017. Thus, there was no criminal history at the time of the events forming the Indictment.

4) Statements to Pretrial

Government alleged Defendant's statements to the Pretrial Services Officer. (See pag. 2)(Doc. # 223).

4A) Rebutting the Court's Order.

Defendant never fail a drug test on the time that he was on Probation that can also be verify by probation Officer Vicky Juarez.

5) NO Conditions or Combination

Government alleged Defendant has no Conditions or Combination. (See ^{Doc.} # 223).

5A) Rebutting Courts Order

See. U.S. v. O'Brien, 895 F.2d 810, 815-17 (1st Cir. 1990) Affirming Pretrial release order for defendant who, despite being flight risk, overcame presumption against release by agreeing to wear electronic monitoring bracelet and posting homo as surety.

6) Travels Outside the Country.

The defendant was not wholly forthcoming with the pretrial Service Officer about his travels outside the country (see pag. 2) (Doc. No. 223)

6A) Rebutting the Court's Order.

Regarding the defendant traveling outside the country, When defendant travels outside the Country defendant Alexander Alonso Mascarra had permission at the time from the Probation Officer to cross the border from Laredo Tx to Nuevo Laredo Mexico, In at the same time repor to (her) Probation Officer. That can be Verify by Probation Officer Vicky Juarez

IV

See. *Stack v. Boyle*, 342 U.S. 1, (1951)

Congress has reduced this generality in providing more precise standards, stating that.

"...the amount thereof shall be such as, in the judgment of the commissioner or court or judge or justice, will insure the presence of the defendant, having regard to the nature and circumstances of the offence charged, the weight of the evidence against him, the financial ability of the defendant to give bail and the character of the defendant.

Federal Rules Criminal Proc. 46(c)

These statutory standards are not challenged as unconstitutional; rather, the amounts of bail established for these petitioners are alleged to exceed these standards.

It is complained that the District Court fixed a uniform blanket bail chiefly by consideration of the nature of the accusation, and did not take into account the difference in circumstances between different defendants. If this occurred, it is a clear violation of Rule 46(c).

VI

The due process Clause of the Fifth (5th) Amendment provides that "No person shall... be deprived of life, liberty, or property, without due process of Law...." This Court has held that the Due Process Clause protects individuals against two types of government action. So-called "substantive due process" prevents the government from engaging in conduct that "shocks the conscience," Rochin v. California, 342 U.S. 165, 343 U.S. 172 (1952), or interferes with rights "implicit in the concept of ordered liberty" Palko v. Connecticut, 302 U.S. 319, 302 U.S. 325-326 (1937). When government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner. Mathews v. Eldridge, 424 U.S. 319, 424 U.S. 335 (1976). This requirement has traditionally been referred to as "procedural" due process.

Respondents first argue that the Act violates substantive due process because the pretrial detention it authorizes constitutes impermissible punishment before trial. See Bell v. Wolfish, 441 U.S. 520, 441 U.S. 535, and n.16 (1979). The Government, however, has never argued that pretrial detention could be upheld if it were "punishment." The court of Appeals assumed that pretrial detention under the Bail Reform Act is regulatory, not penal, and we agree that it is.

Defendant argues that the government brought the conspiracy indictment against the defendant in bad faith. ~~the~~ (government admitted on February 12, 2020, that the defendant had nothing to do with this Conspiracy and Conspirators), from indictment to the information. Defendant has been punished by the government for 28 months and should be released on pretrial release.

PC Pec. (276-27078)

Al Ria, Alex Cesari Alonso

Alexander Alonso Muscato

Defendant

Prosecutorially Submitted.

so that he can present new evidence, not previously available
Defendant, would respectfully request this Court to enter a default on hearing

RELIEF REQUESTED

recognition. (P.R. Bond)

combining the court orders, in order for the defendant to be released on personal
Defendant equally would submit to electronic monitoring and/or any other

the co-defendants

Defendant Alexander Alonso Muscato had nothing to do with this conspiracy or
falsify. The United States Attorney Christopher Delpoerler admitted on record that
17, 2020 during the suppression hearing for text message and co-defendant
In conclusion Defendant would like this Court evidence presented on February

12-06-19

(Doc. 6004)

CERTIFICATE OF SERVICE

Per the prison mailbox rule, Defendant has placed in the hands of La Salle Corrections employees for mailing to the below parties on this _____ day of _____ 2020

Clerk of U.S. District Court

Beaumont Division

300 Willow st Room 104

Beaumont Tx 77701

U.S. Attorney Office

Christopher T. Rapp

350 Magnolia Suite 150

Beaumont Tx 77701-2237

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Case No. 1:17 CR 153

ORDER

Judge Thad Heartfield

COMES NOW, Defendant Alexander Alonso Mascorro and files the
Motion For Pretrial Release Based Upon New Evidence

This Court orders after reviewing said Motion

Granted _____

Denied _____

Dated on This _____ day of _____ 2020

Honorable Judge